



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

# DRAFT

Date:	03/21/13	Bill No:	<a href="#">Assembly Bill 698</a>
Tax Program:	Sales & Use Tax	Author:	Grove
Sponsor:	BOE Member Runner	Section:	RTC 6812
Related Bills:		Effective:	01/01/14

## BILL SUMMARY

This bill provides that the BOE can only assess successor liability for sales tax if the purchaser of a business *intentionally* fails to withhold funds from the purchase price.

## ANALYSIS

### CURRENT LAW

Existing California law<sup>1</sup> imposes specific requirements on a purchaser of a business with respect to sales and use tax liability. Purchasers must withhold sufficient monies from the purchase price to cover any sales and use tax, interest and penalties due from the seller unless:

- The seller produces a receipt (Certificate of Tax Payment) from the BOE showing that all liabilities have been paid, or
- A certificate from the BOE stating that no amount is due.

If the purchaser fails to withhold from the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price of the business.

### PROPOSED LAW

This bill provides that purchasers become personally liable for payment of the amount they are required to withhold to the extent of the purchase price if the purchaser of a business or stock of goods intentionally fails to withhold from the purchase price an amount equal to the seller's tax liability.

### IN GENERAL

A successor liability is based on an outstanding liability of the business seller. The seller's liability is not extinguished when the successor liability is established. Accordingly, the BOE can pursue collection from both the seller and the purchaser related to a successor liability.

When a purchaser of a business requests a sales tax clearance, the BOE must either issue a certificate of sales tax clearance or inform the purchaser of the amount that must be paid as a condition of issuing the certificate. The BOE must either issue the certificate or provide the payment due information within one of the following time periods, whichever expires later:

- 60 days after receiving the request;

<sup>1</sup> Revenue and Taxation Code (RTC) Sections 6811 through 6815 of the Sales and Use Tax Law. Successor liability is also authorized under the Motor Vehicle Fuel, Use Fuel, Oil Spill Response, Timber Yield, Private Railroad Car, and Diesel Fuel Tax programs.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*

- 60 days from the date on which the former owner's records are made available for audit; or
- 60 days from the date of the sale of the business or stock of goods.

### BACKGROUND

The BOE recognizes that successors are often caught unaware of the liability until after the BOE mails its notice of liability. Accordingly, the BOE has sponsored legislation to assist the purchaser. Previous legislative changes:

- Allowed the purchaser to appeal the successor liability;
- Established a statute of limitations concerning liability notices;
- Established the authority to relieve the purchaser from penalties originally imposed upon the business seller and later included in the successor billing; and
- Required the BOE to mail the notice of successor liability within a specified time period.

In 2006, the Property and Special Taxes Department proposed, and the BOE Members voted 3 to 2 to [sponsor legislation](#) to expand the successor liability provision to the remaining special tax and fee programs. However, no author carried the bill.

[SB 1501](#) (2002, Johnson) required the BOE to exhaust all available collection remedies against a seller before pursuing collection from the purchaser. Additionally, the bill relieved the purchaser of any interest and penalty that accrued prior to the BOE exhausting those remedies. The Senate Revenue and Taxation Committee did not hear the bill.

[SB 1502](#) (2002, Johnson) relieved the purchaser of any penalty accrued by the seller prior to the BOE's notification of the seller's unpaid sales and use tax obligation. The Assembly Appropriations Committee held the bill.

### COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by BOE Member Runner to give the BOE greater discretion when determining whether to assign responsibility to the purchaser of a business for the former owner's unpaid taxes accrued prior to the purchase.
2. **Administration.** BOE staff does not anticipate any administrative complications from this measure.

### COST ESTIMATE

The BOE administrative costs would be insignificant.

**REVENUE ESTIMATE**

A total of 79 successor liability billings were issued in Fiscal Year 2011-12, for a total of \$3.4 million. No specific information is available at this time to determine how many of these billings resulted from the purchaser intentionally failing to withhold sufficient funds from the purchase price. However, it is likely that only a small portion of these billings are the result a purchaser's intentional actions.

---

Analysis prepared by:	Larry Bergkamp	916-322-7281	04/22/13
Contact:	Michele Pielsticker	916-322-2376	
Is			0698ab032113lrb.docx

---

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.*